

Title 49—Department of Transportation
CHAPTER VI—URBAN MASS
TRANSPORTATION ADMINISTRATION

[Docket No. 78-02, Notice 1]

PART 604—CHARTER BUS OPERATIONS

Codification of Requirements

On June 13, 1975, the Urban Mass Transportation Administration published its proposed regulations governing the provision of charter bus service by recipients of Federal financial assistance for the purchase and operation of buses.

The Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1604 et seq. (hereinafter "the UMT Act"), makes available both capital and operating assistance for mass transportation facilities and equipment. In addition, certain provisions of title 23, United States Code (Highways) authorize the use of Federal-aid highway funds for capital costs of carrying out non-highway mass transportation projects.

Funds from both programs may be made available for bus projects. The authorizing legislation restricts eligible projects, however, to "mass transportation," and expressly excludes charter, sightseeing or school bus service. UMTA therefore does not fund buses the principal use of which is such service. Pursuant to an Opinion of the Comptroller General of the United States, UMTA does permit its grantees to use federally-financed equipment in "incidental" charter operations—operations that do not interfere with regularly scheduled service to the public (see Appendix A of this part). Operating assistance under section 5 of the UMT Act, however, may only be used to support mass transportation operations. These regulations codify the "incidental" charter restriction on the use of federally-financed equipment, give guidelines for incidental use of mass transportation equipment, and establish financial reporting procedures that will enable UMTA to ensure that Federal operating assistance will not be used in support of charter operations.

The charter bus operations of grantees of Federal financial assistance for the purchase or operation of buses are further constrained by section 3(f) of the UMT Act, as amended, which applies also to bus grants under the Federal-aid highway programs of Title 23. Section 3(f) of the UMT Act, 49 U.S.C. 1602(f), provides that an applicant for Federal assistance for the purchase or operation of buses (and/or the operation of the equipment) must enter into an agreement with the Secretary of Transportation that it will not engage in charter bus operations outside of the urban area within which it provides regularly scheduled mass transportation service except as provided in an agreement with the Secretary of Transportation that in his judgment provides fair and equitable arrangements designed to ensure that the Federal financial assistance will not enable the assisted operators, whether public or private, to foreclose private operators from the intercity charter bus in-

dustry where such private operators are willing and able to provide service.

The proposed regulations require public operators in constructing their charter rates to take into account the actual costs (both direct and indirect) of operating charter service, without regard to capital or operating assistance received under either the Federal-Aid Highway Act or the UMT Act, and compel public operators to generate revenues from their charter bus operations that were equal to or greater than the cost of providing the service. The proposed regulations also set out a requirement for a cost allocation plan, the construction of charter rates based on that allocation, and the generation of revenues that equal or exceed cost as determined in the allocation plan. As a result of the public comments on the proposed regulations, we have made some changes in the final regulations which cause them to differ from the proposed regulations. The requirement of cost certification was for the most part favorably received, although several different views were put forth as to what costs should or should not be subject to certification. These final regulations require the certification of all costs which are attributable to a public operator's charter bus operations. Public operators must include in their certifications, in addition to all other relevant costs, depreciation expense on federally-assisted buses, facilities and equipment as an element of cost, and State and Federal taxes whether or not the public operator pays such taxes.

The accounting methods used by a grantee to arrive at certified costs must be consistent with its regular methods of accounting, and must be consistent with generally accepted accounting principles. Public operators therefore may not use an accounting method to construct favorable rates for charter bus operations if the accounting method used is different from their regular method of accounting.

Like the proposed regulations, the final regulations require the public operator applicant to give notice to all private operators in its service area of its proposed charter bus operations. Private operators are allowed to comment at public hearings on the public operator's proposed charter bus operations prior to each new grant. Private operators are also allowed to comment on a public operator's proposed charter bus operations where grants are already approved since grantees are required to come into compliance with this new part. The UMTA Administrator will take into account these comments in making a decision whether to approve the public operator's plan as a "fair and equitable arrangement" within the meaning of a section 3(f) of the UMT Act, or to take some action in disapproval.

The final regulations do not require quarterly or annual reporting of charter revenues by a public operator. Such operators are, however, required to maintain records which justify their costs. These records must be made available in the event they are requested by an au-

thorized person. The failure of a public operator to produce such records when requested will result in UMTA's refusal to pay requested funds.

In addition to the requirements that charter revenues exceed costs, the final regulations prohibit any practice which is designed to circumvent the requirements of section 3(f) of the UMT Act. Under this provision, a private operator may complain if it believes that specific point-to-point charter rates charged by an UMTA grantee are designed to eliminate competition by private charter operators on these routes, or if he believes that the grantee has violated the agreement.

Other changes made in the final regulations include a modified definition of the term "urban area" which is now defined as the entire area within which a public operator is authorized, by appropriate local, State, and Federal law, to conduct mass transportation services. The words "authorized by appropriate local, State, and Federal law" did not appear in the proposed regulations. The definition of "charter bus operations" has been modified to exclude sightseeing services. Federally-assisted buses, facilities and equipment may not be used in sightseeing service, however, except on an incidental basis. A new provision has been added to these final regulations which clarifies that the public hearing on charter bus operations is the same hearing required under section 3(d) of the UMT Act. Finally, the procedures for certification in lieu of notice has been modified to require proof where an applicant certifies that there are no private charter bus operators in its service area.

The Administrator will investigate all complaints made under the procedures in these regulations. In the event of a finding of a violation, he may order such remedial measures as he deems appropriate, including cancellation of the agreement. Where he finds that there has been a continuing pattern of violations, the Administrator may prohibit disbursement of funds under the instant grant contract or bar a grantee from the receipt of further Federal financial assistance for mass transportation facilities and equipment. Formal administrative procedures are provided for the adjudication of complaints.

A number of grantees have, prior to the publication of this notice, entered into agreements under previous and superseded versions of the charter bus legislation. In section 813(a) of the Housing and Community Development Act of 1974 (Pub. L. 93-383, 88 Stat. 633), the Congress authorized the modification of these agreements to conform with current requirements; these regulations provide procedures for effecting appropriate modifications. In addition, since passage of the National Mass Transportation Assistance Act of 1974, which brought section 3(f) into its current form, many UMTA grantees have signed grant contracts incorporating an agreement not to engage in charter bus service at all except in accordance with an agreement that has not yet been en-

tered into as of the date of this notice. The procedures contained herein may be used for the creation of appropriate arrangements.

In summary, these final regulations govern the formulation and content of agreements required in the UMT Act and the Federal-Aid Highway Act which in the judgment of the Secretary of Transportation provides fair and equitable arrangements designed to ensure that the Federal financial assistance will not enable the assisted operations, whether public or private, to force private operators from the intercity charter bus industry where such private operators are willing and able to provide service.

Although these are final regulations, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted to the Urban Mass Transportation Administration, Office of the Chief Counsel, Attention: Rules Docket Number 76-02, Notice 1, 400 7th Street S.W., Washington, D.C. 20590. All communications received will be considered.

These regulations are issued under the authority of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.); 23 U.S.C. 142 (a) and (c); 23 U.S.C. 103 (e) (4); 49 CFR 1.51.

In consideration of the foregoing, it is proposed to issue a new Part 604 of 49 CFR Chapter IV as follows.

Issued on: March 29, 1976.

ROBERT E. PATRICELLI,
Urban Mass Transportation
Administrator.

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Subpart F—Reports, Information and Records

- Sec.
- 604.50 Reports and information.
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- Authority: Urban Mass Transportation Act, as amended (49 U.S.C. 1601 et seq.); 23 U.S.C. 103 (e) (4); 23 U.S.C. 142 (a) and (c); and 49 CFR 1.51.

Subpart A—General

§ 604.1 Purpose.

The purpose of this part is to prescribe policies and procedures governing the provision of charter bus services and the reporting of charter bus revenues and expenses by recipients of Federal financial assistance for the purchase or operation of buses under either the Urban Mass Transportation Act of 1964, as amended, or those provisions of title 23, United States Code, that authorize the use of Federal-aid highway funds for the purchase of buses. The procedures of this part are designed to ensure that capital and operating assistance made available under these statutes will not be used in support of charter bus operations.

By the terms of section 3(f) of the Urban Mass Transportation Act of 1964, as amended, which is made applicable to bus purchases, no Federal financial assistance may be provided for the purchase or operation of buses unless the grantee enters into an agreement with the Secretary of Transportation that the grantee, or any operator of mass transportation equipment for that grantee, will not engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation service, except as permitted under that agreement.

§ 604.2 Scope.

These regulations apply to all recipients of Federal financial assistance for the purchase or operation of buses under: (a) the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.); (b) 23 U.S.C. 142 (a) and (c); and (c) 23 U.S.C. 103(e) (4) who derived more than fifteen thousand dollars (\$15,000) in annual revenues, during its most recently completed fiscal year, from charter bus operations as defined herein.

§ 604.3 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601, 1608) are used in this part as so defined.

(b) For purposes of this part—

"The Acts" means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.); 23 U.S.C. 142 (a) and (c); and 23 U.S.C. 103(e) (4).

"Administrator" means the Urban Mass Transportation Administrator or his designee.

"Agreement" means a contractual agreement required under section 3(f) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(f)) providing that a grantee, or any operator of mass transportation equipment for a grantee, will not engage in charter bus operations outside its urban areas except

by the terms of that agreement.

"Applicant" means applicant for assistance under the Acts.

"Assistance" means Federal financial assistance for the purchase or operation of buses under the Acts.

"Grant contract" means the contract between the Government and the grantee which states the terms and conditions for assistance under the Acts.

"Certification of costs" means a statement prepared using generally accepted accounting principles, consistent with a grantee's regular accounting methods, and certified to be true and accurate by a grantee's chief financial officer. This statement indicates the elements of cost that are attributable to a grantee's charter bus operations. A grantee's statement must include depreciation expense on federally-assisted buses, facilities and equipment as an element of cost, and State and Federal taxes, whether or not the grantee is required to pay such taxes. This statement shall also give assurance that the revenues generated by charter bus operations are, and shall remain, equal or greater than the cost of providing the service. The period covered by a grantee's statement shall not be less than two or greater than four of its most recently completed fiscal quarters. (Costs which are subject to certification are listed in Appendix B of this part.)

"Charter bus operations" means transportation by bus of a group of persons who, pursuant to a common purpose, and under a single contract, at a fixed charge for the vehicles or service, in accordance with the carrier's tariff, have acquired the exclusive use of a bus to travel together under an itinerary, either agreed on in advance, or modified after having left the place of origin. (This includes the incidental use of buses for the exclusive transportation of school students, personnel and equipment.)

"Cost allocation plan" means the documentation identifying, accumulating, and distributing cost attributable to charter bus operations together with the allocation methods used.

"Government" means the Government of the United States of America.

"Grantee" means a recipient of assistance under the Acts.

"Incidental" means charter bus operations which do not interfere with regularly scheduled service to the public as defined in the Opinion of the Comptroller General of the United States, B-169204, December 7, 1956, which is attached as Appendix A of this part.

"Urban area" means the entire area in which a local public body is authorized by appropriate local, State and Federal law to provide regularly scheduled mass transportation service. This includes all areas which are either: (a) within an "urbanized area" as defined and fixed in accordance with 23 CFR Part 470, subpart B; or (b) within an "urban area" or other built-up place as determined by the Secretary under section 12(c) (4) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1608(c) (4)).

Subpart B—Charter Bus Agreements

§ 604.10 Purpose.

The purpose of this subpart is to formulate procedures for the development of an agreement concerning charter bus operations.

§ 604.11 Use of mass transportation equipment.

(a) No grantee or operator of mass transportation equipment shall engage in charter bus operations using buses, facilities, or equipment funded under the Acts except on an incidental basis in strict compliance with the Opinion of the Comptroller General of the United States, B-160204, December 7, 1966, in Appendix A of this part.

(b) Any of the following uses of mass transportation buses in charter bus operations will be presumed not to be incidental:

(1) Weekday charters which occur during peak morning and evening rush hours;

(2) Weekday charters which require buses to travel more than fifty miles beyond the grantee's urban area; or

(3) Weekday charters which require the use of a particular bus for more than a total of six hours in any one day.

§ 604.12 Agreement.

Every grantee shall as a condition of assistance, enter into a written agreement, that neither it nor any operator of mass transportation equipment on its behalf, will engage in any charter bus operations where points of origin or destination will be outside of its urban area except as permitted under that agreement. The agreement shall become a part of the grant contract between the Government and the grantee.

§ 604.13 Contents of agreement.

Except as provided in § 604.14 the agreement required by § 604.12 shall contain the following provisions:

Special Agreement.—These provisions are found to constitute fair and equitable arrangements within the meaning of section 3(f) of the Urban Mass Transportation Act of 1964, as amended, to assure that the financial assistance granted by the Government under this mass transportation grant project will not enable the grantee, or any operator of the project equipment for the grantee, to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service.

Accordingly, the parties agree as follows:

(1) The grantee agrees that neither it, nor any operator or project equipment, will engage in charter bus operations outside the urban area within which it provides regularly scheduled mass transportation services except as provided herein.

(2) The grantee, or any operator of project equipment, agrees that revenue generated by its charter bus operations are equal or greater than the cost of providing charter bus operations consistent with its cost allocation plan.

(3) The grantee, or any operator of project equipment, agrees that it will not establish any charter rate which is designed to foreclose competition by private charter bus operators.

(4) The grantee agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement or part 604 of the Urban Mass Transportation regulations.

(5) The grantee agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any use of project facilities and equipment in charter service will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation services to the public.

(6) If the Administrator determines that there has been a violation of this agreement, he may order such remedial measures as he may deem appropriate, including cancellation of this agreement. The Administrator may prohibit disbursement of funds under the grant contract to the grantee or operator if he determines that there has been a continuing pattern of violations of the terms of this agreement, and may bar future Federal financial assistance to the grantee.

§ 604.14 Other agreements.

Where the Administrator determines that the requirements of section 3(f) of the UMT Act and section 164(b) of the Highway Act can be met by an agreement which contains provisions other than those set forth in § 604.13 of this part, he may authorize the use of alternative provisions as he deems appropriate.

§ 604.15 Notice.

(a) Each applicant who engages or wishes to engage charter bus operations shall include the following in its application:

(1) A statement that it has provided written notice to all private charter bus operators operating in its urban area of its application for assistance and its proposed or existing charter bus operations;

(2) A statement that it has published in a newspaper of general circulation in its urban area a notice of its application and its proposed or existing charter bus operations;

(3) A certification of costs for the applicants proposed charter bus operations;

(4) A cost allocation plan.

(b) The notice required by paragraphs (a)(1) and (a)(2) of this section shall include the following information:

(1) A description of the area within which the applicant is authorized by local, State and Federal law to conduct charter bus operations. Copies of the document granting such authority should be attached. Where there are disputes over jurisdiction pending that would affect charter bus operations this information should be included in that notice.

(2) An estimation of the number of each type of bus which will be employed on the proposed charter bus operations, and the number of weekdays or weekends those buses will be available for charter bus operations. The applicant shall also include a statement that the proposed use of these buses will not interfere with regularly scheduled mass transportation services.

(3) A statement of the time, date, and place of public hearings required under section 3(d) of the Urban Mass Trans-

portation Act of 1964, as amended (49 U.S.C. 1602(d)), to be held on the application for assistance.

(c) Copies of the application for assistance and notice required by paragraph (a) of this shall be available for inspection during the regular business hours at the office of the applicant.

§ 604.16 Certification in lieu of notice.

If there are no private charter bus operators operating in the applicant's urban area, the applicant may so certify in its application in lieu of meeting the requirements of § 605.15. This certification shall be accompanied by a statement that the applicant has published, in a newspaper of general circulation in its urban area a notice stating that it has applied for assistance under the Acts as provided under § 604.15(b) and that it has certified that there are no private charter bus operators operating in its urban area. A copy of the notice as published shall be included.

§ 604.17 Comments by private charter bus operators.

Private charter bus operators may file written comments on an applicant's proposed or existing charter bus operations at the time of the public hearing held pursuant to section 3(d) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(d)). The comments of private charter bus operators must be submitted by the applicant to the Administrator together with the transcript of this public hearing required pursuant to 49 U.S.C. 1602(d).

§ 604.18 Approval of charter bus operations.

(a) The Administrator will consider the comments filed by private charter bus operators prior to making any findings regarding either the applicant's certification of costs, cost allocation plan, or other aspects of its proposed charter bus operations.

(b) After a showing by the applicant that it has complied with the requirements of 49 U.S.C. 1602(d) and this subpart, the Administrator may accept the applicant's certification of costs and otherwise approve its cost allocation plan and charter bus operations. Such acceptance and approval, however, is subject to audit and inspection which may be conducted at any time by the Government under § 604.52 of this part.

(c) If the Administrator finds that the applicant has not complied with the notice requirement of § 604.15, or otherwise finds that the applicant's certification of costs, cost allocation plan, or proposed charter bus operations are unacceptable, he will so notify the applicant in writing stating the reasons for his findings.

(d) Within 30 days after receiving notice of adverse findings from the Administrator, an applicant may file written objections to the Administrator's findings or submit a revised certification of costs, a revised cost allocation plan, or a revised proposal for its charter bus operations.

(e) Upon receipt of notice of acceptance of its certification of costs, cost allocation plan, and approval of its charter bus operations, the applicant may enter into an agreement with the Administrator under § 604.12 of this part.

Subpart C—Modification of Prior Agreements and Amendment of Applications for Assistance

§ 604.20 Modification of prior agreements.

(a) Any grantee which, prior to the adoption of this part, entered into an agreement required by section 184(a) of the Federal-Aid Highway Act of 1973, section 3(d) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602(f)), not to engage in charter bus operations in competition with private providers of charter bus operations outside its urban area, or an interim agreement under section 3(f) allowing charter bus operations, shall seek modification of that agreement to conform to the requirements of this part in accordance with paragraphs (b)-(d) of this section.

(b) The grantee shall develop a certification of costs for its charter bus operations and send it with its proposed or existing charter bus operations and cost allocation plan to private charter bus operators whose service originates in the grantee's urban area.

(c) The grantee shall allow 30 days for persons receiving notice in this section to respond with written comments concerning its proposed or existing charter bus operations.

(d) After receiving written comments, the grantee shall send his proposal with written comments thereon to the Administrator for his review under § 604.18 of this part.

§ 604.21 Amendment of applications for assistance.

Pending applications for assistance upon which public hearings have been held pursuant to section 3(d) of the UMT Act (49 U.S.C. 1602(d)), and applications which have been approved by the Administrator but for which no grant contract has been executed, shall be amended by the applicant to conform to this part by following the procedures of § 604.20(b)-(d). Any other applications for assistance shall comply with §§ 604.15 or 604.16 of this part.

Subpart D—Revisions of Certification

§ 604.30 Revisions of certification.

(a) Certification of costs filed under this part may be revised by a grantee or any operator of project equipment by filing proposed revisions, properly certified, with the Administrator. Notice of those revisions shall be sent to private charter bus operators in the urban area, who may file comments with the Administrator within 15 days after receipt of notice. Proposed revisions shall become effective 30 days after filing unless within that period the Administrator finds them to be unacceptable and so notifies the party filing the certification of costs.

(b) UMTA may require that certifica-

tion of costs be revised using the procedures in paragraph (a) of this section where the grantee has a gross revenue change of 25 percent or more from the average two preceding fiscal quarters.

Subpart E—Complaint Procedures and Remedies

§ 604.40 Filing a complaint.

Any interested party may file a complaint with the Administrator alleging a violation or violations of terms of an agreement entered into pursuant to § 604.12. A complaint must be in writing and must specify in detail the action claimed to violate the agreement, and must be accompanied by evidence sufficient to enable the Administrator to make a preliminary determination as to whether probable cause exists to believe that a violation of the agreement has taken place.

§ 604.41 Notification to the respondent.

On receipt of any complaint under § 604.40, or on his own motion if at any time he will have reason to believe that a violation may have occurred, the Administrator will provide written notification to the grantee concerned (hereinafter called the "respondent"). The Administrator will inform the respondent of the conduct which constitutes a probable violation of the agreement.

§ 604.42 Accumulation of evidentiary material.

The Administrator will allow the respondent not more than 30 days to show cause, by submission of evidence, why no violation should be deemed to have occurred. A like period shall be allowed to the complainant, if any, during which he may submit evidence to rebut the evidence offered by the respondent. The Administrator may undertake such further investigation as he may deem necessary, including, in his discretion, the holding of an evidentiary hearing or hearings before an Administrative Judge.

§ 604.43 Adjudication.

(a) After reviewing the results of such investigation, including hearing transcripts, if any, and all evidence submitted by the parties, the Administrator will make a written determination as to whether the respondent has engaged in charter bus operations in violation of terms of the agreement.

(b) If the Administrator determines that there has been a violation of this agreement, he may order such remedial measures as he may deem appropriate.

(c) If the Administrator should determine that a violation has occurred, he will include a specific statement as to whether there has been a continuing pattern of violations.

(d) The determination by the Administrator will include an analysis and explanation of his findings.

§ 604.44 Remedy where there has been a continuing pattern of violations.

If the Administrator determines, pursuant to this subpart, that there has been

a continuing pattern of violations of the terms of the agreement, he may bar a grantee from the receipt of further financial assistance for mass transportation facilities and equipment.

§ 604.45 Judicial review.

The determination of the Administrator pursuant to this subpart will be final and conclusive on all parties, but shall be subject to judicial review pursuant to Title 5 U.S.C. §§ 701-706.

Subpart F—Reports, Information and Records

§ 604.50 Reports and information.

The Administrator may order any grantee or operator for a grantee, to file special or separate reports setting forth information relating to any transportation service rendered by such grantee or operator, in addition to any other reports required by this part.

§ 604.51 Records.

(a) Each grantee subject to this part shall maintain such records as are sufficient to demonstrate that its charter rates are in compliance with the terms of its agreement.

(b) Records required to be maintained under paragraph (a) of this section shall be made available for audit and inspection at any time upon the request of an officer or employee of the Government.

(c) Upon the request of an authorized officer or employee of the Government any grantee which has filed a certification of costs pursuant to this part, shall:

(1) Specify the records that comply with paragraph (a) of this section; and

(2) Justify certification of costs.

(d) Each grantee required to maintain a record under this section shall preserve that record at least four years after the last day of the calendar year in which the record was made or events recorded in that record occurred, whichever is later.

APPENDIX A

COMPTROLLER GENERAL OF THE UNITED STATES,
WASHINGTON, D.C. 20548

B-160204.

Dec. 7, 1966.

DEAR MR. WILSON: The enclosure with your letter of October 4, 1966, concerns the legality of providing a grant under the Urban Mass Transportation Act of 1964 to the City of San Diego, (City), California. The problem involved arises in connection with the definition in subsection 9(d)(5) of the act, 49 U.S.C. 1608(d)(5), excluding charter or sightseeing service from the term "mass transportation."

It appears from the enclosure with your letter that the City originally included in its grant application a request for funds to purchase 8 buses designed for charter service. Subsequently the City amended its application by deleting a request for a portion of the funds attributable to the charter bus coaches. However, in addition to the 8 specially designed charter buses initially applied for, the City allegedly uses about 40 of its transit type buses to a substantial extent for charter-type services. In light of these factors surrounding the application by the City, the enclosure requests our opinion with regard to the legality of grants under the act as it applies to certain matters (in effect ques-

tions), which are numbered and quoted below and answered in the order presented.

Number one:

"The grant of funds to a City to purchase buses and equipment which are intended for substantial use in the general charter bus business as well as in the Mass Transportation type business."

The Urban Mass Transportation Act of 1964 does not authorize grants to assist in the purchase of buses or other equipment for any service other than urban mass transportation service. Section 3(a) of the act limits the range of eligible facilities and equipment to "... buses and other rolling stock, and other real or personal property needed for an efficient and coordinated mass transportation system." In turn, "mass transportation" is defined, in section 3(d) (5) of the act, specifically to exclude charter service. We are advised by the Department of Housing and Urban Development (HUD) that under these provisions, the Department has limited its grants to the purchase of buses of types suitable to meet the needs of the particular kind of urban mass transportation service proposed to be furnished by the applicant.

HUD further advises that:

"One of the basic facts of urban mass transportation operations is that the need for rolling stock is far greater during the morning and evening rush hours on weekdays than at any other time. For that reason, any system which has sufficient rolling stock to meet the weekday rush-hour needs of its customers must have a substantial amount of equipment standing idle at other times, as well as drivers and other personnel being paid when there is little for them to do. To relieve this inefficient and uneconomical situation, quite a number of cities have offered incidental charter service using this idle equipment and personnel during the hours when the same are not needed for regularly scheduled runs. Among the cities so doing are Cleveland, Pittsburgh, Alameda, Tacoma, Detroit and Dallas.

"Such service contributes to the success of urban mass transportation operations by bringing in additional revenues and providing full employment to drivers and other employees. It may in some cases even reduce the need for Federal capital grant assistance.

"We do not consider that there is any violation of either the letter or the spirit of the Act as a result of such incidental use of buses in charter service. To guard against abuses, every capital facilities grant contract made by this Department contains the following provisions:

"Sec. 4. Use of Project Facilities and Equipment—The Public Body agrees that the Project facilities and equipment will be used for the provision of mass transportation service within its urban area for the period of the useful life of such facilities and equipment. . . . The Public Body further agrees that during the useful life of the Project facilities and equipment it will submit to HUD such financial statements and other data as may be deemed necessary to assure compliance with this Section."

It is our view that grants may be made to a city under section 3(a) of the act to purchase buses needed by the city for an efficient and coordinated mass transportation system, even though the city may intend to use such buses for charter use when the buses are not needed on regularly scheduled runs (i.e., for mass transportation purposes) and would otherwise be idle.

Number two:

"Whether a grant of such funds is proper if charter bus use is incidental to mass public transportation operations. If so, what is the definition of 'incidental use.'"

We are advised by HUD that under its legislative authority, it cannot and does not take charter service requirements into consideration in any way in evaluating the needs of a local mass transportation system for buses or other equipment.

HUD further advises that:

"However, as indicated above, we are of the opinion that any lawful use of project equipment which does not detract from or interfere with the urban mass transportation service for which the equipment is needed would be deemed an incidental use of such equipment, and that such use of project equipment is entirely permissible under our legislation. What uses are in fact incidental, under this test, can be determined only on a case-by-case basis."

In view of what we stated above in answer to the first question, the first part of question two is answered in the affirmative.

As to the second part of the question, in *Security National Insurance Co. v. Securogah Marine*, 246 F.2d 830, "incidental" is defined as meaning "that which appertains to something else which is primary." Thus, we cannot say HUD's definition of "incidental use" as set forth above is unreasonable. Under the act involved grants may be made to purchase buses only if the buses are needed for an efficient and coordinated mass transportation system. It would appear that if buses are purchased in order to meet this need, and are, in fact, used to meet such need, the use of such buses for charter service when not needed for mass transportation service would, in effect, be an "incidental use," insofar as pertinent here. In our opinion such incidental use would not violate the provisions of the 1964 act.

Number three:

"The grant of funds for mass public transportation purposes to a City which has expressed an intent to engage in the general charter bus business when such funds would in effect constitute a subsidy to the City of its intended charter bus operations; i.e., free-riding Municipal funds with which to purchase charter bus equipment."

Section 4(a) of the 1964 Act (49 U.S.C. 1903(a)) provides, in part, as follows:

"* * * The Administrator (now Secretary), on the basis of engineering studies, studies of economic feasibility, and data showing the nature and extent of expected utilization of the facilities and equipment, shall estimate what portion of the cost of a project to be assisted under section 1903 of this title cannot be reasonably financed from revenues—such portion shall hereinafter be called 'net project cost'. The Federal grant for such a project shall not exceed two-thirds of the net project cost. The remainder of the net project cost shall be provided, in cash, from sources other than Federal funds * * *"

It is clear from the legislative history of the act involved that the "revenues" to be considered are mass transportation system revenues including any revenues from incidental charter operations. There is nothing in the language of the act which requires HUD to take into account the status of the general funds of an applicant city in determining how much capital grant assistance to extend to that city.

It should be noted that in a sense nearly every capital grant to a city constitutes a partial subsidy of every activity of the city which is supported by tax revenues, since it frees tax revenues for such other uses.

Number four:

"With specific reference to the application of the City of San Diego for funds under its application to the Department of Housing and Urban Development dated June 2, 1964, whether the Act permits a grant to purchase equipment wherein 25 per cent of such equip-

ment will be used either exclusively or substantially in the operation of charter bus services."

As to the City of San Diego's grant application, we have been advised by HUD as follows:

"As explained above, the Act authorizes assistance only for facilities to be used in mass transportation service. We could not, therefore, assist San Diego in purchasing any equipment to be used 'exclusively' in the operation of charter bus service. Furthermore, as also explained above, assisted mass transportation equipment can be used only incidentally for such charter service."

"Whether equipment used 'substantially' in such service qualifies under this rule can be answered only in the light of the specifics of the San Diego situation. * * * we have already, during our preliminary review of the City's application, disallowed about \$150,000 of the proposed project cost which was allocated to the purchase of eight charter-type buses."

"The final application of the City of San Diego is presently under active consideration by this Department. In particular, we have requested the City to furnish additional information as to the nature and extent of the proposed use, if any, of project facilities and equipment in charter service, so that we can further evaluate the application under the criteria above set forth. We have also requested similar information from Mr. Fredrick J. Buane, who has filed a taxpayer's suit (Superior Court for San Diego County Civil #297329) against the City, contesting its authority to engage in charter bus operations."

As indicated above, it is clear that under the act in question grants may not legally be made to purchase buses to be used "exclusively" in the operation of charter bus service. However, in view of the purposes of the act involved it is our opinion that a city which has purchased with grant funds buses needed for an efficient mass transportation system, is not precluded by the act from using such buses for charter service during idle or off-peak periods when the buses are not needed for regularly scheduled runs. As indicated above, such a use would appear to be an incidental use.

The fourth question is answered accordingly.

As requested, the correspondence enclosed with your letter is returned herewith.

Sincerely yours,

FRANK H. WATTELL,
Assistant Comptroller General
of the United States

Enclosures.
The Honorable Bob Wilson,
House of Representatives.

APPENDIX B EXPENSE REPORTING List of Expenses LABOR

1. Operators' Salaries and Wages
2. Other Salaries and Wages

FRINGE BENEFITS

1. FICA or Railroad Retirement
2. Pension Plans (including long-term disability insurance)
3. Hospital, Medical and Surgical Plans
4. Dental Plans
5. Life Insurance Plans
6. Short-Term Disability Insurance Plans
7. Unemployment Insurance
8. Workmen's Compensation Insurance or Federal Employees Liability Act Contributions

9. Sick Leave
10. Holiday (including all premiums paid for on holidays)
11. Vacation
12. Other Paid Absence (bereavement pay, military pay, jury duty pay, etc.)
13. Uniform and Work Clothing Allowances
14. Other Fringe Benefits
15. Distribution of Fringe Benefits

SERVICES

1. Management Service Fees
2. Advertising Fees
3. Professional and Technical Services
4. Temporary Help
5. Contract Maintenance Services
6. Custodial Services
7. Security Services
8. Propulsion Power
9. Utilities Other than Propulsion Power
10. Dues and Subscriptions
11. Travel and Meetings
12. Bridge, Tunnel and Highway Tolls
13. Other Services

MATERIALS AND SUPPLIES CONSUMED

1. Fuel and Lubricants
2. Tires and Tubes
3. Other Materials and Supplies

CASUALTY AND LIABILITY COSTS

1. Premiums for Physical Damage Insurance
2. Recoveries of Physical Damage Losses
3. Premiums for Public Liability and Property Damage Insurance
4. Payouts for Uninsured Public Liability and Property Damage Settlements
5. Provision for Uninsured Public Liability and Property Damage Settlements
6. Payouts for Insured Public Liability and Property Damage Settlements
7. Recoveries of Public Liability and Property Damage Settlements
8. Premiums for Other Corporate Insurance
9. Other Corporate Losses
10. Recoveries of Other Corporate Losses

LEASES AND RENTALS

1. Transit Way and Transit Way Structures and Equipment
2. Passenger Stations
3. Passenger Parking Facilities
4. Passenger Revenue Vehicles
5. Service Vehicles
6. Operating Yards or Stations
7. Engine Houses, Car Shops and Garages
8. Power Generation and Distribution Facilities
9. Revenue Vehicle Movement Control Facilities
10. Data Processing Facilities
11. Revenue Collection and Processing Facilities
12. Other General Administration Facilities

DEPRECIATION AND AMORTIZATION

1. Transit Way and Transit Way Structures and Equipment
2. Passenger Stations
3. Passenger Parking Facilities
4. Passenger Revenue Vehicles
5. Service Vehicles
6. Operating Yards or Stations
7. Engine Houses, Car Shops and Garages
8. Power Generation and Distribution Facilities
9. Revenue Vehicle Movement Control Facilities
10. Data Processing Facilities
11. Revenue Collection and Processing Facilities
12. Other General Administration Facilities

PROPERTY RETIREMENT WRITE-OFFS

1. Property Retirement Write-Offs

INTEREST EXPENSE

1. Interest on Debt Obligations (net of interest capitalized)

OTHER TAXES

1. Federal Income Tax
2. State Income Tax
3. Property Tax
4. Vehicle Licensing and Registration Fees
5. Fuel and Lubricant Taxes
6. Other Taxes

EXPENSE TRANSFERS

1. Function Reallocations
2. Expense Reallocations
3. Capitalization of Nonoperating Costs

SUBSIDY PAYMENTS

1. Purchased Transportation Service

MARCH 29, 1976.

INFLATIONARY IMPACT STATEMENT

FINAL REGULATIONS

Charter Bus Operations

I certify that, in accordance with Executive Order 11821, dated November 27, 1974, and Departmental implementing instructions, an Inflationary Impact Statement is not required for the final regulations on Charter Bus Operations.

ROBERT K. PATRICKS,
Urban Mass Transportation
Administrator.

[FR Doc. 76-8418 Filed 3-31-76; 8:45 am]

[Docket No. 76-03, Notice 1]

PART 605—SCHOOL BUS OPERATIONS
Codification of Requirements

On June 13, 1975, the Urban Mass published proposed regulations governing school bus operations by recipients of Federal financial assistance for the purchase of buses, or the construction or operation of facilities and equipment, for use in providing mass transportation service. These regulations added a new Part 605 to UMTA regulations to protect private school bus operators who are in competition with federally-assisted operators in providing transportation for school students, personnel and equipment. The proposed regulations prohibited school bus operations by federally-assisted operators unless such operators were expressly permitted under section 3(g) of the Urban Mass Transportation Act of 1964, as amended, or section 184(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).

Section 3(g) provides that an applicant for Federal financial assistance for the construction or operation of facilities and equipment for use in providing public mass transportation service must agree not to engage in school bus operations, exclusively for the transportation of students and school personnel, in competition with private school bus operators. The subsection does not apply if the applicant operates a school system in the area to be served and operates a

separate and exclusive school bus program for such school system; nor does it apply unless private school bus operators are able to provide adequate transportation, at reasonable rates, and in conformance with applicable safety standards; and it does not apply with respect to any State or local public body or agency thereof if it or a direct predecessor in interest from which it acquired the function of so transporting schoolchildren and personnel (along with facilities to be used therefore) was engaged in school bus operations at any time during the twelve-month period immediately prior to the date of enactment of the provision. Section 184(b) is an identical provision applying only to the purchase of buses, but applying irrespective of whether they are assisted under the Urban Mass Transportation Act or under the Federal-Aid Highway Act. Where school bus operations were permitted either under sections 3(g) or 184(b), the proposed regulations required a showing by the federally-assisted operator that the Federal assistance was not used to subsidize these school bus operations.

UMTA received a great deal of public comment on the proposed regulations. All of the comments were helpful. Many were invaluable. As a result of the comments, we have developed these final regulations on school bus operations which will effectively carry out the purpose of sections 3(g) and 184(b). These final regulations will add a new Part 605 to UMTA's regulations.

The current Part 605 differs in many respects from the proposed version issued for public comment. Greater emphasis is placed in the current version on the fact that federally-assisted buses, facilities and equipment may not be used for the exclusive transportation of school students, personnel or equipment. Even if a federally-assisted operator is allowed to engage in school bus operations under one of the exemptions listed in sections 3(g) and 184(b), the operator cannot use federally-assisted buses, facilities and equipment in those operations. School bus operations as defined in Part 605 may only be undertaken in Type I or Type II buses as defined by Highway Safety Program Standard 17 (as amended May 1973). Federally-assisted buses must remain open to the public at all times and be clearly marked for public use. This requirement was added to prevent federally-assisted operators from operating special routes for schoolchildren which are not generally available to the public. Where a federally-assisted operator is allowed to engage in school bus operations using Type I or Type II buses, these buses may be serviced or maintained in federally-assisted facilities or equipment only where such use does not interfere with the use of such facilities and equipment for the regular mass transit fleet. If these buses are so serviced or maintained, the proportion of such use attributable to school bus service maintenance is not an al-